

## **MINUTES**

### **MONTANA SENATE 56th LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON JUDICIARY**

**Call to Order:** By **CHAIRMAN LORENTS GROSFIELD**, on January 20, 1999 at 9:00 A.M., in Room 325 Capitol.

#### **ROLL CALL**

**Members Present:**

Sen. Lorents Grosfield, Chairman (R)  
Sen. Al Bishop, Vice Chairman (R)  
Sen. Sue Bartlett (D)  
Sen. Steve Doherty (D)  
Sen. Duane Grimes (R)  
Sen. Mike Halligan (D)  
Sen. Ric Holden (R)  
Sen. Reiny Jabs (R)  
Sen. Walter McNutt (R)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** Jodi Pauley, Committee Secretary  
Valencia Lane, Legislative Branch

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: SB 66, 1/17/1999  
SB 213, 1/17/1999  
Executive Action: None

**CHAIRMAN LORENTS GROSFIELD** passed out a handout from the Department of Corrections concerning bills impacting prisons. **EXHIBIT(jus15a01)** And a memo from the Three Forks School District concerning **SB 152. EXHIBIT(jus15a02)**

#### **HEARING ON SB 66**

**Sponsor:** **SENATOR JOHN BOHLINGER, SD 7, Billings**

Proponents:

Joe Mazurek, Attorney General  
Christine Kaufmann, MT Human Rights  
REP. JEFF MANGAN, HD 45, Great Falls  
Cat Carrel, PRIDE, Self  
John Connor, MT County Attorney's Assoc.  
Colleen Murphy, MT Chapter of Social Workers  
Margaret MacDonald, MT Assoc. of Churches  
Joe Kijewski, MT Youth Action  
Kellie Gibson, Self  
John Drummond, Self  
Gina Hartung, Metropolitan Community Church  
Barrett Kaiser, ASUM  
Beth Loehnen, Self  
Ron Waterman, Helena Attorney  
Carl Donovan, Self  
James Bekier, U of M  
Molly Madden, Student  
Joe Loos, Self  
Karen Loos, Self  
Eleanor Furbush, Self  
Daniel Casey, Self  
David Holley, Self  
Les Childers, Self  
Jared McCormick, Student  
Mikhail Lewis, Self  
Rebecca Moog, Montana's Women's Lobby  
Jessica Kobos, ASUM  
Larisa Wahler, Student  
Bob Ream, MT Democratic Party  
Scott Crichton, ACLU  
Corky Smith, Self  
Mary Jay Nelginfritz, Self  
Pastor Ken Moore, First Christian Church  
Lindy Ballard, Self  
Brenda Wahler, Self

Opponents:

Steve White, Self  
Laurie Koutnik, Christian Coalition of MT  
Jenny Dodge, Citizens Network  
Jeanette Zentgraf, Concerned Women for America  
Arlette Randash, Eagle Forum  
Jack Hane, Self

**Opening Statement by Sponsor:**

**SENATOR JOHN BOHLINGER, SD 7, Billings**, opened on SB 66.

**EXHIBIT(jus15a03)**, **EXHIBIT(jus15a04)**

*{Tape : 1; Side : A; Approx. Time Counter : 9:14 a.m.}*

**Proponents' Testimony:**

**Joe Mazurek, Attorney General**, said he was the original sponsor of hate crime laws in 1989. This legislation was enacted because of white supremacy activity happening in Northwestern Montana. This act does not give special status to anyone, it simply focuses on the perpetrator of a crime. If the state can prove that the crime was motivated by hate or tolerance of a group of people the sentence may be enhanced. He said he had received several letters asking why he was giving these people special status and this bill does not do that. He said an individual asked him when are they going to create some protection for white Christian men. They are protected under the existing law. The existing hate crime statute has worked very well in small and large communities, and is judicially applied. He said this autumn in the city of Dillon a young gay man was targeted by a written death threat. Dillon is not a hot bed of liberalism. The chief of police was surprised that he couldn't charge that individual under the existing statute. In Helena, they have had gay groups targeted by physical attack. Yes, there are assault statutes on the books that cover that. But as a society, they need to say there are certain crimes that are directed at groups and they are designed to create fear and intimidate. This hate is like a virus and it spreads beyond isolated events. He handed out testimony from the Department of Justice **EXHIBIT(jus15a05)** and he also said the Governor is in favor of this law. **EXHIBIT(jus15a06)**

**Christine Kaufmann, MT Human Rights**, said there is confusion about hate crime laws. It is really about the perpetrator, not the status of the victim. When they talk about the murder of Matthew Shepard and other violent acts it is confusing. If they think about three words scrawled on a public building it is graffiti. If those three words are "Terry loves Chris" in a heart they have a very different feeling than if those words are "death to Jews" next to a Swastika. As a society, one of those acts has really violated the values that they hold. The other one everyone thinks is a nuisance and people should not scrawl words on a public building. The crime is the same though. This is why they distinguish between murder in the first degree and regular murder, because it is planned and premeditated and a different penalty is appropriate. She said in December they started a post card campaign and have had over 1500 cards that have been

returned to include sexual orientation in the Montana hate crime laws.

**REP. JEFF MANGAN, HD 45, Great Falls,** said this bill is not about gay and lesbian Montanans. This bill is about Montanans and U.S. citizens. By adding sexual orientation, they are only affecting those who are accused of the crime. The accused has a right to a jury and they can make a determination if it is a hate crime. He said during his campaign he participated in the project vote smart. And one of the questions was if he supported gay and lesbian marriages and he answered yes. It was amazing how many hateful things he received just for answering yes. He said his family was scared because of the hatred that he got from this. If a person is attacked because of race, creed, religion, color, national origin, and sexual orientation, then it is a hate crime.

**Cat Carrel, PRIDE, Self,** said there are some misconceptions about bias crimes. Adding sexual orientation to the bias crime laws would protect everyone not just homosexuals. There was a poll done by CNN time that showed 75 percent of the respondents felt sexual orientation should be included in hate crime laws. Eighty-two percent thought it was a serious problem in the country. There are degrees of severity for crimes depending on the intent of the perpetrator and this is the case for hate crimes as well.

**John Connor, MT County Attorney's Assoc.,** stood in support of **SB 66.**

**Colleen Murphy, MT Chapter of Social Workers,** rose in support of **SB 66. EXHIBIT(jus15a07)**

**Margaret MacDonald, MT Assoc. of Churches,** said their church has a position paper that addresses malicious harassment and discrimination based on race and religion. In 1994, they amended the position paper to include all people and that they should be protected. Hate crimes should include all people.

**{Tape : 1; Side : A; Approx. Time Counter : 9:31 a.m.}**

**Joe Kijewski, MT Youth Action,** said he hears the words faggot, queer, dike and Homo everyday at school. Sometimes there is malicious intent when these words are said. One-third of all suicides of teenagers are linked directly with that teenager trying to deal with his/her sexuality. This state has seen fit to have hate crime legislation since 1989. Sexual orientation needs to be added to hate crimes. He is afraid that someday at their school, someone will become open about their sexuality and then they will have to deal with being beaten, harassed or even killed. Hate crimes give them the ability to prosecute and if one

life is saved or a beating is curbed because of this legislation it is worth it.

**Kellie Gibson, Self**, said this legislation will keep all people safe. As a parent, she wants to know that her children will be protected. She said she works with youth every day that are perpetrators and the ones that commit hate crimes are a different breed. Adding sexual orientation does not give gays more rights, but helps people who are subject to hate crimes.

**John Drummond, Self**, rose in support of SB 66. **EXHIBIT(jus15a08)**

**Gina Hartung, Metropolitan Community Church**, supported SB 66. **EXHIBIT(jus15a09)**

*{Tape : 1; Side : A; Approx. Time Counter : 9:40 a.m.}*

**Barrett Kaiser, ASUM**, said he represents every student at the University of Montana. When the news of Matthew Shepard's death hit their campus it struck fear and disgust in many students. Since then, he has received many letter and phone calls, not to encourage this kind of thing from happening on their campus.

**Beth Loehnen, Self**, handed out testimony in support of SB 66. **EXHIBIT(jus15a10)**

**Ron Waterman, Helena Attorney**, said he represents people everyday who are targeted by their sexual orientation. He said workers, etc. are forced to leave their jobs because they have recognized that their differences will become a target of discrimination.

**Carl Donovan, Self**, said he is a gay man and has had his property attacked with blood, human feces, and bricks thrown through his windows because he is gay. When Matthew Shepard was killed it was very emotional because he could be the next victim.

**James Bekier, U of M**, said he and his family have been threatened because he is gay. Laws are a way of teaching society and it sends a message that violence is not acceptable. They need to feel safe in Montana and the laws need to protect society.

*{Tape : 1; Side : B; Approx. Time Counter : 9:50 a.m.}*

**Molly Madden, Student**, handed out a survey that was conducted in the high schools in Helena. **EXHIBIT(jus15a11)** This legislation does not give special rights to any person. Every single person in Montana can claim to have a sexual orientation and if they are

attacked because of it, then it doesn't matter if they are gay or straight, this law will protect them.

**Joe Loos, Self**, handed out testimony in support of **SB 66**.

**EXHIBIT(jus15a12)**

**Karen Loos, Self**, stood in support of **SB 66**. **EXHIBIT(jus15a13)**

**Eleanor Furbush, Self**, supported **SB 66**.

**Daniel Casey, Self**, handed in testimony for **SB 66**.

**EXHIBIT(jus15a14)**

**David Holley, Self**, supported **SB 66**. **EXHIBIT(jus15a15)**

**Les Childers, Self**, urged passage of **SB 66**.

**Jared McCormick, Student**, supported **SB 66**.

**Mikhail Lewis, Self**, supported **SB 66**.

**Rebecca Moog, Montana's Women's Lobby**, handed in testimony in favor of **SB 66**. **EXHIBIT(jus15a16)**

**Jessica Kobos, ASUM**, supported **SB 66**.

**Larisa Wahler, Student**, said she was in support of this bill.

**Bob Ream, MT Democratic Party**, handed in testimony for **SB 66**.

**EXHIBIT(jus15a17)**

**Scott Crichton, ACLU**, said they support this bill.

**EXHIBIT(jus15a18)**

**Corky Smith, PFLAG**, supported **SB 66**. **EXHIBIT(jus15a19)**

**Mary Jay Nelginfritz, Self**, supported **SB 66**.

**Pastor Ken Moore, First Christian Church**, said he is a supporter of this bill.

**Lindy Ballard, Self**, said she supports this bill.

**Brenda Wahler, Self**, handed in testimony for **SB 66**.

**EXHIBIT(jus15a20)**

**Opponents' Testimony:**

**Steve White, Self**, said this bill adds a sexual orientation to a list of traits that is immutable. This decision has been supported by the U.S. Supreme Court. They already have laws that are meant to bring justice to perpetrators of violent crime no matter who the victim may be. Why should they differentiate between hate crimes and other violent acts? They can't enforce the equal opportunity laws that they have on the books now, let alone hate crime laws. Laws have a purpose and this bill creates special statuses. He used the example of his son being attacked and his apartment broken in to. And a similar act was committed across the street at a gay man's house. And if his son was not homosexual, the perpetrator across the street would get more jail time than the one that attacked his son. He submitted an article by Christine Kaufmann. **EXHIBIT(jus15a21)**

**Laurie Koutnik, Christian Coalition of MT**, handed out testimony in opposition of **SB 66**. **EXHIBIT(jus15a22)** She delivered amendments for SB 291 that was introduced in 1997. **EXHIBIT(jus15a23)** She also passed out an article about hate crimes. **EXHIBIT(jus15a24)**

**Jenny Dodge, Citizens Network**, rose in opposition of **SB 66**. **EXHIBIT(jus15a25)**

**Jeanette Zentgraf, Concerned Women for America**, said she opposes this bill. **EXHIBIT(jus15a26)** She also submitted a newspaper article about Montana schools protecting homosexuals. **EXHIBIT(jus15a27)**

*{Tape : 1; Side : B; Approx. Time Counter : 10:20 a.m.}*

**Arlette Randash, Eagle Forum**, said they oppose this bill. **EXHIBIT(jus15a28)**

**Jack Hane, Self**, said they all stand on common ground as being Montanans. He has never been denied liberty or the pursuit of happiness. All are created equal and no group should be given preferential treatment. Hate is exhibited in every crime and every crime is an act of maliciousness and irresponsibility. To distinguish one as hate and the other as a crime is an error.

*{Tape : 1; Side : B; Approx. Time Counter : 10:32 a.m.}*

**Questions from Committee Members and Responses:**

**SENATOR RIC HOLDEN** said a lot of Christians in Montana believe that the Bible is the word of God. When they start to talk about

the word of God and how that relates to sexual preferences, this will cause a lot of attention. He talked about line 14 and how it would affect a church and its minister. A pastor from this upbringing would preach that this form of gay lesbian sex is inappropriate according to his religion. He asked with the addition of this into the law would the minister be in trouble for preaching this to the congregation? **Joe Mazurek** said under the first amendment of the Constitution he would have the right to engage in free speech. Sexual orientation is used in federal law and in 21 other states. The pastor is free to preach, but if he purposely or knowingly caused bodily injury, damages or destroys any property of that person and is convicted of a criminal offense his sentence could be enhanced. There has to be a crime first and the state has to prove without a doubt that the motivation for the crime was bias against a person protected under law.

**SENATOR HOLDEN** said what they are talking about here is hate. In their religion they preach evangelism and if this same pastor went to the street corner, a bar, etc. and he began to preach the word of God then would that person be spreading a hateful message and offending people in the community. **Mr. Mazurek** said this is not the language in the bill. He can preach hate all he wants. But if he acts upon that hate and commits a crime by harming them personally or their property, then that sentence could be enhanced.

**SENATOR HOLDEN** asked when that occurs, it is pinpointed back to the preacher and he enticed the crowd to do it. **Mr. Mazurek** said he hoped there isn't any preachers in this state of any religion that would entice a crowd to go against homosexuals, blacks, etc. The crime is against the actor of bodily harm, etc. not the preacher.

**SENATOR STEVE DOHERTY** asked if this bill infringed in any way upon the free exercise of anyone's religious believe and would the Montana Assoc. of Churches support this bill. **Margaret MacDonald** said they support this bill and have had discussions on this issue. She said it would be slander to the pastors of this state to imply in anyway that they would advocate violence or hate toward people of any sexual orientation.

**SENATOR DOHERTY** asked how this act would work from a prosecutorial standpoint? If they had an incident of someone preaching from the street corner, would that cause a county attorney to bring a charge against that individual. **John Connor** said he did not see a situation occurring where prosecutions would be appropriate under the terms of this bill, unless the person preaching was attempting the entice the crowd to take



physical action. This act would not be used in such cases as the Matthew Shepard case. This act only carries a maximum penalty of 5 years and \$5000 and the enhancement provision is 10 years. If there is serious injury, they would prosecute under the statutes that allow them to take significant action under serious injury. He used an example in Jefferson Co. where there were lesbian women living in Basin. They were good citizens, but they were routinely harassed because of their sexual orientation. They were never assaulted, but were afraid that it might escalate into a serious crime. The reason these categories require more protection is they receive more harassment than say loggers or smokers.

**SENATOR MIKE HALLIGAN** asked in the situation where there are two crimes committed at the same time and they give preference to this type of crime at the expense of trying to take care of issues related to the other crime. **John Connor** said if he was the prosecutor, he would prosecute the breaking in as a burglary. Prosecutors do not seek out particular categories of people in terms of applying prosecution discretion.

**SENATOR HALLIGAN** asked about the balance between first amendment rights and the rights to freedom of religion. **Scott Crichton** said this is a hate crime bill and it enhances penalties when crimes are committed against a class of people who are not protected. They defend hateful speech through debate and having it out in the open and defeating it.

**SENATOR HALLIGAN** asked what about the religious aspects of the Bible and its preachers. **Mr. Crichton** said he was not sure.

**SENATOR DUANE GRIMES** asked when would this bill appear to cause reasonable apprehension of bodily injury. He said if he were to stand up in a public place and quote from scripture, would that cause action to be taken? He said he is worried about an infringement issue. **Mr. Mazurek** said he would not be prosecuted because the definition of reasonable apprehension of bodily harm has been in law for a long time. If he threatened someone with a knife and carried it out, the victim would fear bodily harm. But when someone preaches from scripture there is no threat or ability to carry it out.

**SENATOR GRIMES** asked if the gay rights bill in New York state was primarily centered around hate crimes. **Jeanette Zentgraf** said it was.

**SENATOR HOLDEN** asked on line 16, what the attorney general's position on bodily injury was? He asked if bodily injury included

mental anguish, inconvenience or mental harassment. **Mr. Mazurek** said bodily injury is defined in 45-2-101.

**SENATOR HOLDEN** asked if they stood behind the mental anguish part of the definition. **Mr. Mazurek** said yes he does, because it is the law of this state.

*{Tape : 2; Side : A; Approx. Time Counter : 10:55 a.m.}*

**Closing by Sponsor:**

**SEN. BOHLINGER** said this doesn't deal with the color of one's skin or gender, they are born with these characteristics. He referred to a newspaper article, "Catholic Bishops Tell Parents to Love Homosexual Children". **(EXHIBIT 4)** Under the intent of this bill, it brings into consideration how this crime affects the entire community.

**HEARING ON SB 213**

**Sponsor:** **SENATOR LORENTS GROSFIELD, SD 13, Big Timber**

**Proponents:**

**Steve White, Self**  
**Tom Rasmussen, Self**  
**Arlette Randash, Eagle Forum**  
**Laurie Koutnik, Christian Coalition of MT**  
**Jenny Dodge, Citizens Network**  
**Jeanette Zentgraf, Concerned Women for America**

**Opponents:**

**Natalie Fisher, Self**  
**John Conner, Attorney General's Office**  
**Pete Lawrenson, MT Assoc. of Chief of Police**  
**Jessica Kobos, ASUM**  
**Christine Kaufmann, MT Human Rights**  
**Scott Crichton, ACLU**  
**David Holley, Self**  
**Kellie Gibson, Self**  
**Margaret McDonald, MT Assoc. of Churches**  
**Cat Carrel, PRIDE, Self**  
**Joe Kijewski, MT Youth Action**  
**REP. CAROL JUNEAU, HD 85, Browning**  
**Rebecca Moog, Montana's Women's Lobby**  
**Larisa Wahler**  
**Brenda Wahler, Self**  
**David Herrera, Self,**

Karen Loos, Self  
 Les Childers, Self  
 James Bekier, U of M  
 Joe Loos, Self  
 Daniel Casey, Self  
 Barrett Kaiser, ASUM  
 Corky Smith, Self  
 Carl Donovan, Self  
 Gina Hartung, Metropolitan Community Church  
 Bill Fleiner, MT Sheriffs and Peace Officers Assoc.  
 Molly Madden, Student  
 Mikhail Lewis, Self

SEN. BISHOP took over the chair.

**Opening Statement by Sponsor:**

SENATOR LORENTS GROSFIELD, SD 13, Big Timber, said this bill addresses eliminating certain specific crimes that are already covered by some journal criminal provisions. It provides enhanced sentences for crimes that are committed for discriminatory purposes. It repeals 45-5-204, 45-5-211, 45-5-221, and 45-5-222. It does not make sense to create criminal offenses for something that is already a criminal offense. Trespass is trespass. Creation of criminal offenses with respect to some classes of victims and not others is discriminatory. This bill also says that if a crime is committed, the court should decide on the sentence, not the prosecuting attorney. He discussed section one of the bill. He said the problem with a list is, who are they leaving off? If someone is left off, then the question is why is some forms of bigotry acceptable and others are not. It sends the message to criminals that they can be equal opportunity offenders. The 14th amendment provides for equal rights, and protection. If they seek more than that, they are no longer talking about rights, but in the area of privileges. Article 2, section 4, of the Montana Constitution talks about individual dignity and no discrimination regarding race, color, etc. But it does not include mentally disabled, homosexuals, elderly, environmentalist, hippies, legislators, etc. and neither is this included in hate crime statutes. This bill addresses why some forms of bigotry is acceptable and others are not. This bill says in Montana, they do not accept any form of criminal activity.

**Proponents' Testimony:**

Steve White, Self, said what they have developed in their laws is a laundry list of different reasons to commit a crime. He used the example of his son's apartment being broken into and the homosexual's apartment across the street being broken into. The

criminals that had committed bigotry would have been dealt a harsher sentence than that of his son. Why is it that someone else that has committed the same crime against someone of the preserved notion of their lifestyle, receive a stiffer sentence? If they commit a crime the price should be paid. He handed out a commentary on "All Violent Crimes are Hate Crimes."

**EXHIBIT(jus15a29)**

**Tom Rasmussen, Self**, said each group strongly believes they should be on the list, but where does the list stop. The criminal justice system is not the place to play out political agendas. Government has to try and read a criminal's mind and find out what their motives are and then try and prosecute. This bill is a way to fix this problem.

**Arlette Randash, Eagle Forum**, said they have seen no evidence that preferential treatment has resulted in the good for which those supporting have asserted. This bill is an improvement over current statutory language and an equitable compromise to the issue of adding special classes.

**Laurie Koutnik, Christian Coalition of MT**, said she supports this bill. The problem with laundry lists is where do they draw the line, someone will always feel left out. This will clean up and clear up any confusion around these statutes from unnecessary duplication. Everyone should be treated fairly under the same laws, by the same virtue that they are all citizens of this state. Judges are elected by the people and great faith is put into them to hear cases and pronounce judgement from an arrangement of sentencing choices.

**Jenny Dodge, Citizens Network**, said this provides equality under the law for Montana citizens from all walks of life.

**Jeanette Zentgraf, Concerned Women for America**, said there is no attempt to give any group special treatment and this is good.

**{Tape : 2; Side : B; Approx. Time Counter : 11:18 a.m.}**

**Opponents' Testimony:**

**Natalie Fisher, Self**, said about ten years ago she received a death threat in the mail because she is Jewish. She said once a year they have a religious retreat. She said that particular year she was in charge of registration and publicity. She said being a Jewish person she knew there could be trouble. She sent out an advertisement in the paper for this event and received a lot of mail including a letter saying they would sabotage their retreat. The retreat went forward to show they were not giving in. She

said there was a lot of fear when they headed to this retreat as they did not know what was going to happen. She said there was some problems, but nobody got hurt. These types of things happen in Montana and there should be as much muscle put into hate crime laws as possible.

**John Conner, MT Co. Attorney's Assoc.**, said they are concerned about some of the statutes being repealed that this legislature has determined to be good public policy. Some of these statutes make it easier for the courts to prosecute, rather than using generic prosecutions. The bill proposes to repeal mistreating prisoners. There is a reason this law was made to protect the people who care for those individuals in custody and have a higher responsibility to protect their well being. The language is too broad. A rapist perceives a potential victim to be vulnerable, a robber perceives a store owner to be unprotected, a murderer perceives a potential victim to require an ugly action. Those kind of generic terms can be applied to most crimes. The language is so broad it would be difficult to prove mental state. A better approach would be to have a joint resolution.

**{Tape : 2; Side : B; Approx. Time Counter : 11:25 a.m.}**

**Pete Lawrenson, MT Assoc. of Chief of Police**, said the intent of current statutes is not to give people more rights. They were created so the judicial system could adequately deal with offenders. When an offender commits an offense with a hateful reason, then those statutes that are currently in place allow the judicial system to appropriately impose a punishment.

**EXHIBIT(jus15a30)**

**Jessica Kobos, ASUM**, said the diversity of our country is why it is so great. To take away the legislation that exists now, is to take away the protection of those differences. They are taking away equality, fairness, and the reason this country was founded.

**Christine Kaufmann, MT Human Rights**, said this is a very confusing bill about who is protected and not protected. She said there is two sections of hate crime laws, one is the sentence enhancement and the other creates the crime of malicious harassment and intimidation that covers burning crosses. Painting swastikas on churches will not be covered if this bill is passed. There is no improvement by eliminating race, creed, color, etc. and putting in position and status. These terms are very difficult and are not defined in the bill.

**Scott Crichton, ACLU**, said they oppose this bill.

**EXHIBIT(jus15a31)**

**David Holley, Self**, said he was involved in a hate crime in Missoula. A group of people shouted offensive language as they passed. He was very angry and he confronted them. One of them knocked him down and started to beat him up. When the perpetrator was finally pulled off he suffered a concussion and his nose was shattered. This is a crime motivated by hate and affected not only him, but the gay and lesbian community. Hate crime legislation is legitimate and should be retained.

**Kellie Gibson, Self**, said she works with a diverse population and these families need to be supported and protected.

**Margaret McDonald, MT Assoc. of Churches**, said hate crimes laws address people who have historically been fair game. It is important that Montana not effectively repeal hate crime statutes. She said in 1993, people in Billings were dealing with flyers from the Ku Klux Klan that went after Jews, blacks, gays and lesbians. People throughout the community had a discussion about whether to support a resolution to oppose hatred and bigotry that had a very specific list. Group after group supported that resolution.

**Cat Carrel, PRIDE**, said she opposes **SB 213**.

**Joe Kijewski, MT Youth Action**, stood in opposition of **SB 213**.

**REP. CAROL JUNEAU, HD 85, Browning**, handed in testimony for **SB 213. EXHIBIT(jus15a32)**

**Rebecca Moog, Montana's Women's Lobby**, handed in testimony for **SB 213. EXHIBIT(jus15a33)**

**Larisa Wahler, Self**, said she opposes this bill.

**Brenda Wahler, Self**, submitted testimony. **EXHIBIT(jus15a34)**

**David Herrera, Self**, said he opposes this bill.

**Karen Loos, Self**, said she opposes this bill.

**Les Childers, Self**, said he is opposed to this bill.

**James Bekier, U of M**, stood in opposition of this bill.

**Joe Loos, Self**, said he opposes this bill.

**Daniel Casey, Self**, stood in opposition of **SB 213**.

**Barrett Kaiser, ASUM**, stood in opposition of this bill.

**Corky Smith, PFLAG**, said she opposes this bill.

**Carl Donovan, Self**, opposed **SB 213**.

**Gina Hartung, Metropolitan Community Church**, opposed **SB 213**.

**Bill Fleiner, MT Sheriffs and Peace Officers Assoc.**, said he opposes this bill.

**Molly Madden, Student**, said she opposes this bill.

**Mikhail Lewis, Self**, said he opposes this bill.

**Questions from Committee Members and Responses:**

**SEN. DOHERTY** asked when the MT Attorney's Assoc., The Chiefs of Police, and the MT Sheriffs and Peace Officers Assoc. oppose this bill, what does this say about the bill? **SEN. GROSFIELD** said most of the opposition comes from the concept of vagueness and the committee can deal with this.

**SEN. DOHERTY** said the words position, employment and status are mushy. He used the example of a Bobcat-Grizzly game where as a Grizzly fan his vocal points would have been well noted by the people sitting around him by the outcome of the game. The vagueness test comes into play here where if a criminal cannot understand the clear impact of his actions prohibited by law, the court will toss this bill. If somebody could thump on him for being a Grizzly fan then it could lead to a possible charge. **SEN. GROSFIELD** said that is not the case. If somebody beat him up, then the perpetrator would be charged for assault and not under this. This act does not create a crime, it creates a sentence enhancement for crimes committed by bigotry and discrimination.

**SEN. DOHERTY** asked if Texas has a specific statute and are they prosecuting hate crimes with the laws that they have. **John Connor** said Texas law reads offenses motivated by bias or prejudice against a group. According to Sen. Ellis from Texas it is not being used because it is so vague.

**SEN. HALLIGAN** said by repealing the malicious intimidation statute along with the other ones, they may be decriminalizing the Swastika painted on the windshield, etc.. He questioned the intention of the bill. **SEN. GROSFIELD** said the intention of this bill is not to include cross burning or other things. Cross

burning deals with criminal mischief and sentence enhancements provided by this bill.

**SEN. HALLIGAN** asked what if the burning is on a public street.

**SEN. GROSFIELD** said there are a variety of statutes that deal with this type of thing. Most jurisdictions require a permit to have a parade and they are conscious of disorderly conduct laws and so on. There is very fine line between free speech which allows a person to express bigotry and that is protected by our Constitution. The intention is not to encourage this sort of thing or to let it off the hook.

**SEN. BARTLETT** asked if it is correct that the maximum sentence for the underlying crime is 10 years and if an individual is sentenced for that, there would be no sentence enhancement under this bill. **SEN. GROSFIELD** said this was correct. He said this is an interesting issue to define what the seriousness of the crime is. If they are talking murder, the death penalty could be imposed and cannot be enhanced. People involved in those situations are probably not going to be charged with that. People who commit an assault and have the maximum under the assault laws would not be subject to hate crimes or anti-discrimination statutes because this is an assault.

**SEN. BARTLETT** asked if it is possible that there would be no sentence enhancement under this bill? **SEN. GROSFIELD** said partly, and it is at the judge's discretion. A judge might enhance someone's sentence, because of something that came up in the trial from a witness, etc..

*{Tape : 2; Side : B; Approx. Time Counter : 11:58 a.m.}*

**SEN. HOLDEN** said in 1995 the MT Human Rights Coalition wanted to get rid of all hate crimes and not differentiate between different kinds of hate. Again in 1997, the Coalition tried to expand hate crime legislation into all areas. But now, he is getting a mixed reaction on this and feels this would leave the Coalition out. **Christine Kaufmann** said a hate crime statute should be inclusive of all those people who are targeted because of specific characteristics. There are some holes in the current laundry list concerning disability and gender. She said her concern in **SB 213** is instead of having definable characteristics, there are words that are not definable and it will no longer be used in the State of Montana. It will not benefit anyone.

**SEN. HOLDEN** said in 1995 and 1997 he opposed the legislation because of the broadness of it. But it was testified that it needed to be broad and include more people and now the Coalition wants it smaller. **Christine Kaufmann** said what has happened here



is that it has become meaningless and will not be used. The question will always arise as to what characteristics should be on a list. There should be a list that is definable and can be used in a court of law.

**SEN. DOHERTY** asked if they struck the underlying statute that contains the list, does it make it more or less likely that a prosecutor would seek to enhance the sentence? **Mr. Connor** said the effect of this bill may be more broad than intended. It proposes to repeal 45-5-221, the malicious intimidation statute, and to make a new statute dealing with enhancement that provides the court with the opportunity to do what it can already do now. It proposes a misdemeanor offense to replace the repealed felony offenses and this is a problem as it doesn't deal with these situations.

**SEN. BISHOP** said they now have a list with five categories on it and why do they have this laundry list? **SEN. GROSFIELD** said when Joe Mazurek carried this bill in 1989 the list of five was already there. Nothing has been added to the list since then. **SB 213** would repeal the list and expand to cover all types of discrimination.

**Closing by Sponsor:**

**SEN. GROSFIELD** said he is a rancher, a Norwegian, a legislator, etc. and most everybody in this room has probably has had some kind of incident happen to them concerning discrimination. He said when he was younger his hair used to be long and one day he went to Roscoe, MT and getting out of his vehicle, there was an old cowboy there that did not like hippies. This person had to be physically restrained from coming after him with a pair scissors. There are things that they do that people don't approve of. He said he has received hate mail from opposing CI-75. He said what this bill is trying to do is make people realize that Montanans do not tolerate discrimination, bigotry, and crimes committed with those kinds of motivation. He would like this bill to pass Constitutional muster. Current hate crime statutes do not deal with sexual orientation but this bill does. This bill includes the language actual or perceived. He used the example of walking down the street with a homosexual friend and he is not a homosexual and he gets harassed. He is not covered under the current hate crime statute. But under this bill he would be. They need clarity and the ability to enforce and the judge needs this discretion. He doesn't want this used with a plea bargain situation, but used by the judge. He said in 1997, in Billings, Edward Robinson, who is mentally and physically disabled was sitting on a street corner waiting for the bus and some guys beat him up. He quoted out of the *Billings Gazette* from July 16,

"Robinson had what looked like a boot print on the right side of neck and eyes." His eyes were swollen shut. Because he is mentally and physically disabled, he is not covered by hate crime statutes. If they talk about anti-discrimination they should include all classes.

**ADJOURNMENT**

Adjournment: 12:07 P.M.

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SEN. LORENTS GROSFIELD, Chairman

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JODI PAULEY, Secretary

LG/JP

**EXHIBIT** (jus15aad)